



Office of the Attorney General
State of Texas

July 16, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Thomas M. Pickford, Jr.
Foster, Lewis, Langley, Gardner
& Banack
112 East Pecan Street, Suite 1100
San Antonio, Texas 78205-1533

OR93-464

Dear Mr. Pickford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20396.

The Northside Independent School District (the "school district"), which you represent, has received a request for three categories of information. Specifically, the requestor seeks:

- 1) The method(s) and or criteria your school district uses to determine extension of contract and salary increases for your district's Superintendent.
- 2) Copies of these evaluations as presented to the school board for a period covering the last three school years which were used in determining your Superintendent's contract extensions (if applicable) and salary increases.
- 3) The Board of Trustees individual personnel evaluation reports to extend the contract of your Superintendent for the same period.

You object to release of items 2 and 3 above. You claim that sections 3(a)(1) and 3(a)(11) of the Open Records Act except this information from required public disclosure. As you do not comment on item 1, we presume that the school district has or will make this information available to the requestor. See Open Records Decision No. 363 (1983).

You claim that the Open Meetings Act, article 6252-17, V.T.C.S., makes items 2 and 3 confidential and that the school district must therefore withhold this information under section 3(a)(1) of the Open Records Act, which excepts "information deemed

confidential by law, either Constitutional, statutory, or by judicial decision." Section 2A of the Open Meetings Act requires governmental bodies meeting in closed session to "keep a certified agenda of the proceedings." V.T.C.S. art. 6252-17, § 2A(a). The certified agenda

shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time. The certified agenda shall state the subject matter of each deliberation and shall include a record of any further action taken. The certified agenda of closed or executive sessions shall be made available for public inspection and copying only upon court order in an action brought under this Act.

Id. §2A (c). Subsection (d) of section 2A provides:

In lieu of the requirements for maintaining a certified agenda as provided in Subsections (a), (b), and (c) of this section, a governmental body may make a tape recording of the proceedings which shall include an announcement made by the presiding officer at the beginning and end of the meeting indicating the date and time.

As with the certified agenda, a tape recording of an executive session may not be made public unless so ordered by the judge of a district court. *See id.* subsec. (e), (h); *see also* Open Records Decision Nos. 563 (1990) (minutes of a properly held executive session are confidential by virtue of section 2A(c) of the Open Meetings Act); 495 (1988) (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions).

You advise us that the school district generated the information at issue here pursuant to section 21.202 of the Education Code, which provides that "[t]he board of trustees of each school district shall provide by written policy for the periodic written evaluation of each teacher in its employ at annual or more frequent intervals."¹ You further advise us that pursuant to school district policy the school district's board of trustees prepares draft written evaluations of its superintendent in executive session. You thus contend that the draft written evaluations are incorporated into and become a part of the certified agenda. We disagree. The evaluations clearly do not constitute a certified agenda or minutes of an executive session as defined in section 2A of the Open Meetings Act, but are rather written evaluations of a teacher prepared pursuant to statutory requirements contained in the Education Code. In Open Records Decision No. 485 (1985) at 9-10, this office held that information is not excepted from required disclosure

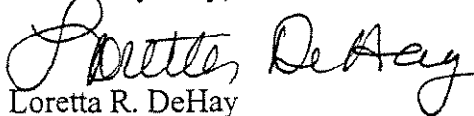
¹Section 21.201 of the Education Code defines "teacher" to include a superintendent. Educ. Code § 21.201.

simply by virtue of its having been considered in an executive session. Similarly, we conclude that the Open Meetings Act makes confidential only information generated during an executive session pursuant to the requirements of section 2A of the Open Meetings Act, that is, a certified agenda or tape of the executive session. It does not make confidential information generated pursuant to the requirements of another statute simply because it was created or discussed during an executive session. Accordingly, items 2 and 3 may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

Finally, you claim that items 2 and 3 constitute "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 413 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently limited the scope of section 3(a)(11). In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception in light of the *Gilbreath* decision and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency employees as to policy issues. *Id.* at 5-6. As items 2 and 3 relate to an internal administrative and personnel matter, we conclude that section 3(a)(11) does not except the information from required public disclosure. Accordingly, the information submitted to us for review must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,


Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/jmn

Enclosure: Open Records Decision No. 615

Ref.: ID# 20396
ID# 20413

cc: Mr. Richard L. Hammel
President
Voice of the Taxpayer
P.O. Box 5617
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(w/o enclosure)